

**THE
SPANGENBERG
GROUP**

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Pierce County
Performance Audits

1001 Watertown Street
West Newton, MA 02465
Tel: 617.969.3820
Fax: 617.965.3966
tsg@spangenberggroup.com

Matt Temmel
Pierce County Performance Audit Coordinator
955 Tacoma Ave. South, Room 302
Tacoma, WA 98402

Dear Mr. Temmel:

The Spangenberg Group submits this letter, at the request of the county, as a supplement to our performance audit report on the Pierce County Department of Assigned Counsel (December 12, 2002). At the start of the project, in November 2001, Pierce County issued Request for Proposals #680. The RFP, at page 4, indicated that the auditors should review indigent defense screening issues because eligibility determination is a main driver of DAC workload. We did extensive work on screening issues during our site visits to Pierce County, but the topic was omitted from the audit report in December. We now present our results here.

The analysis is based on our interviews in 2002 of the Pre-Trial Services supervisor, review of PTS monthly statistics, review of two follow-up reports on cost recovery by Pierce County performance audit staff, and The Spangenberg Group's experience in numerous other jurisdictions working on screening and eligibility issues.

The Spangenberg Group first worked in Pierce County in 1998 on a project in which we analyzed the county's approach to indigent defense eligibility determination and cost recovery. We presented our report in September 1998. Since that time, Pierce County has developed an ability to work productively on indigent defense cost recovery issues, generally along the lines that we recommended. Performance audit staff have issued two follow-up reports on the status of the audit recommendations (November 2000 and October 2002). The follow-up reports provide documentation of three main points:

1. In 1999, a task force of Pierce County officials reviewed our September 1998 report and formulated a package of ten alternative recommendations to be implemented. The task force recommendations were similar to our recommendations but more aggressive on cost-recovery issues.
2. Since 1997, the amount of money recovered by Pierce County has more than tripled, from approximately \$92,000 in 1997 to over \$300,000 in 2002. The main source of revenue has been collection of legal financial obligations ordered by Superior Court. In other areas, such as the \$25 screening fee, the revenue is lower than expected.

Robert L. Spangenberg
President

Marea L. Beeman
Vice President

Rangita de Silva-de Alwis
Director, International
Programs

Jennifer W. Riggs
Research Associate

James M. Downing
Research Assistant

Bret J. Cohen
Administrative Assistant

David J. Newhouse
MIS Analyst

Michael R. Schneider
Of Counsel

3. Pre-Trial Services, a unit in the Sheriff's Department, screens applicants and determines their eligibility for a defense lawyer provided at public expense. Some of the information provided to us suggests continued deficiencies in the program.
- ◆ Only 13% of the persons screened actually pay the \$25 screening fee. The percentage has remained static or fallen slightly since the County Council enacted the fee in 1999. The amount of money collected per year declined, from approximately \$67,000 in 2000 to \$55,000 in 2002.
 - ◆ Out-of-custody screenings were approximately 20% of all screenings conducted in 2002, which is a little higher than in recent years.¹ We believe that the proportion of out-of-custody screenings has not changed appreciably in recent years. In part, that is why PTS collects the fee from only 13% of the persons screened because it is much harder to collect the fee when the person is in jail.²
 - ◆ According to the Pierce County ordinance, the \$25 screening fee was intended to offset the costs of verifying the completeness and accuracy of the financial information provided by applicants who want a lawyer at public expense. According to Pre-Trial Services, minor verification work was attempted in the past, but nothing is currently being done to check or verify reported income and resources.

One approach to address the issues would be to place the screeners in another agency in an effort to improve performance. In our September 1998 report, The Spangenberg Group recommended that screening and eligibility determination functions be transferred from the Sheriff's Department to another agency, such as Budget and Finance. We continue to believe that it is not appropriate that indigent defense screening and eligibility determination be the responsibility of the Sheriff's Department. Legally, it is very questionable whether defendants can be required to provide confidential information to employees of the Sheriff's Department. To our knowledge, no other jurisdiction places those functions in the police agency.

We believe that the placement of PTS in the Sheriff's Department explains, in part, the less-than-satisfactory performance mentioned above. The energies of the PTS staff in the Sheriff's Department are focused on other work that is important to the Sheriff, such as jail classification, among other responsibilities.

The Sheriff formally agreed with our 1998 recommendation that Pre-Trial Services should check or verify the reported income for every fifth or tenth case. However, the agency has not implemented that recommendation. Nor has it implemented a more general recommendation on verification that was made by the Pierce County task force in 1999. It is also of interest that the task force, rather than endorse a change in organizational placement, recommended that the Pre-

¹ The small rise in the number of out-of-custody screenings is influenced by counting differences. When PTS screened a defendant who faced charges in Superior Court and in District Court, this was counted as two screenings in 2000 and earlier. It is now counted as one screening. Thus, the overall number of screenings has declined.

² In our experience, most other criminal justice systems of comparable size to Pierce County focus on screening out-of-custody defendants, since the rate of out-of-custody defendants found not to be indigent exceeds the rate of in-custody defendants found not to be indigent.

Trial Services Advisory Board be re-constituted to explore the role of Pre-Trial Services. The Sheriff's Department has also not implemented that recommendation.

We have two conclusions.

- ◆ For legal, fiscal, and operational reasons, the function of indigent defense screening and eligibility determination does not belong in the Sheriff's Department. Performance will not improve significantly so long as the current structure is retained.
- ◆ A transfer of responsibility to Budget and Finance, which we recommended in 1998, may not have been the best choice, since that agency is not vitally connected with the court system and has no programmatic duties in the criminal justice system.

We have three recommendations for consideration by Pierce County:

1. Transfer indigent defense screening and eligibility determination functions to the Clerk of Superior Court. That agency has a close relationship with Superior Court and plays a vital role in collection of legal financial obligations. We believe that Pre-Trial Services functions located in the Clerk's office would be better able to provide services to the court system. The "Jail Services" functions that are currently performed by Pre-Trial Services should remain in the Sheriff's Department.
2. In Juvenile Court cases, transfer responsibility for indigent defense screening and eligibility determination to Juvenile Court. (Performance audit staff suggested this recommendation in the October 2002 follow-up report, and we agree.) To screen juvenile cases and determine whether they are eligible for assigned counsel, the Pre-Trial Services staff must travel from their downtown office to Remann Hall. That arrangement, by its nature, is inefficient. Juvenile Court staff is responsible for other kinds of screening and could easily take over indigent defense screening.
3. To protect the interests of employees, legislate the transfer of positions and include a "hold harmless" clause in the ordinance. In the hold harmless clause, the ordinance would provide legal assurance that pay rates for the transferred positions will not be reduced.

Please present this supplemental information to the Performance Audit Committee and the various agencies involved in cost recovery efforts. I would be glad to provide any further information that is needed.

Sincerely,



Robert L. Spangenberg
President